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No. 996

In the Supreme Court of the United States

OCTOBER TERM, 1945

AMERICAN STEVEDORES, INC., PETITIONER

v.

ROSARIO PORELLO AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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Essentially, the petition for a writ of certiorari filed in this case presents five questions: (1) Whether a libel in admiralty may be maintained against the United States under the Public Vessels Act (43 Stat. 1112–1113, 46 U. S. C. 781–789), to recover for personal injuries; (2) whether, if jurisdiction exists under that Act, the United States is entitled to be fully indemnified by the contractor under the pertinent provision of a "Warshipsteve" contract, in a case where, as under the holding below, the United States and the impleaded contractor are joint tort feasors; (3) whether a court sitting in ad-

miralty has authority to construe the indemnity clause of the "Warshipsteve" contract or whether this is a "non-maritime" question over which an admiralty court lacks jurisdiction; (4) whether the acceptance, not under an award, of compensation by an injured stevedore under the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U. S. C. 901, *et seq.*) constitutes a bar to the bringing of a negligence action by him against a third party tort feasor; and (5) whether a right of contribution between joint tort feasors in admiralty exists where one of the negligent parties is the employer of the libelant and is immune from suit by reason of the provisions of Section 5 of the Longshoremen's and Harbor Workers' Compensation Act, *supra*. Petitioner recognizes that the last stated question is not directly involved in the circumstances of this case.

If jurisdiction exists to entertain a libel against the United States under the Public Vessels Act, *supra*, to recover for personal injuries, the decision of the court below, we believe, properly holds that the provisions of the "Warshipsteve" contract entitle the United States to be fully indemnified by the impleaded petitioner as joint tort feasor. As the court below recognized, however, its judgment rests initially upon the proposition that the Public Vessels Act permits recovery from the United States for personal injuries. This is a question of importance requiring a determina-

tion whether the word "damages" as used in that Act embraces more than property damage. For the reasons suggested in petitioner's brief (pp. 11–16), we do not believe that the waiver of sovereign immunity effected by that Act permits suit for other than property damage caused by a public vessel.

It is further recognized that the question whether a binding election was made by the injured stevedore in accepting compensation benefits under the Longshoremen's and Harbor Workers' Compensation Act in the circumstances here presented is also a question of considerable importance not easily resolved by an examination of precedent.

Accordingly, we do not oppose the granting of the writ.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

APRIL, 1946.

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